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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,589	08/25/2003	Ricky W. Purcell	18614 (27839-2533)	4251

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EXAMINER
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DVORAK, LINDA C

ART UNIT	PAPER NUMBER
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3739

NOTIFICATION DATE	DELIVERY MODE
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07/08/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USpatents@armstrongteasdale.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/648,589	<b>Applicant(s)</b> PURCELL ET AL.	
	<b>Examiner</b> LINDA C. DVORAK	<b>Art Unit</b> 3739	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on BPAI decision of 2/6/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-9, 11-20, 26-28 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9, 11-20, 26-28 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Decision on Appeal by the Board of Patent Appeals and Interferences mailed 02/06/09 affirmed the rejection of claims 7-9, 11-16, and 18-20. Accordingly, the prosecution on the merits is closed with respect to these claims. A new ground of rejection is set forth below with respect to claims 26-28 and 31. As required by MPEP 1214.04, this action is signed by a Group Director.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Staudinger (US 5792091).

Staudinger discloses a method of supporting a portion of a body, the method comprising attaching one end of an elastic band (col. 1, line 48) to skin on the body using an adhesive (col. 2., lines 1-5); wrapping the elastic band around the portion of the body; and securing a plurality of fingers (Fig. 1, 1, 2) that project from an opposing end of the elastic band to an exposed section of the elastic band. Regarding claim 31, Staudinger further discloses wrapping the elastic band around the body more than one time but less than two times (see Figure 2). The overlapping end of the bandages

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clearly indicates that the elastic band has been wrapped around the body more than one time.

Claims 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Staudinger (US 5792091).

As to the repositioning steps of claims 27 and 28, if not inherent in the steps of applying the bandage as taught by Staudinger, it would have been obvious to one having ordinary skill in the art at the time the invention was made to reposition the fingers 1 and 2 to get the appropriate pressure and tightness of the elbow bandage in order as to not cause pain to the user.

### ***Conclusion***

Any inquiry concerning this communication should be directed to LINDA C. DVORAK at telephone number (571)272-4764.

/Linda C Dvorak/  
Supervisory Patent Examiner, Art Unit 3739

/KAREN M. YOUNG/  
Director, Technology Center 3700